

NORTH DAKOTA'S



EMINENT DOMAIN LAW

because it is severed from the part taken in the condemnation process.

- **Consequential Damages** - awarded if property not taken by condemnation is damaged by construction of the public project.

Occasionally, the construction of the public project improves or enhances the remaining property not taken. In that case, the value of such improvement is deducted from the amount of severance or consequential damages due to the landowner. However, these improvements do not reduce the value of the property taken, or the amount of just compensation.

Attorney Fees

Most courts order the condemnor to pay the landowner's "reasonable" costs and attorney fees associated with the trial. The court decides what is "reasonable," so the landowner may not be fully reimbursed for all actual costs and attorney fees. The court may also require the condemnor to pay the landowner's attorney fees and costs associated with an appeal. However, if the landowner appeals or requests a new trial and does not win, the court may impose the costs of appeal or the new trial on the landowner.

Glossary

Eminent Domain- also called "Condemnation." The power to take private land for public use.

Condemnor- the government agency or private entity which has the power to take private land.

Just Compensation- money the condemnor pays to landowners as compensation for property taken through the eminent domain process, intended to make the landowner financially "whole" again.

Landowner-the person who owns or leases land subject to eminent domain proceedings.

A Summary of Landowner Rights

By law, landowners have the right to:

- Negotiate with the condemnor before condemnation proceedings begin;
- Receive a copy of the appraisal done by the condemnor, or a written statement and summary showing the basis of the condemnor's offer;
- Request and receive a list of neighboring property owners to whom offers have been made, including a map of the affected property; and the list of landowners in adjacent counties whose property is affected by the project;
- Ask a judge to decide whether the property the condemnor wants to take is "necessary" for the proposed use;
- Have a judge or jury decide the amount of "just compensation;"
- Appeal a court decision regarding public use, necessity, or just compensation; and to ask for compensation for attorney fees and costs.

OFFICE OF ATTORNEY GENERAL

Wayne Stenehjem
Attorney General

The Office of Attorney General is prohibited by law from providing legal advice. For legal advice or more information, please contact an attorney in private practice knowledgeable about condemnation proceedings.

Occasionally, private property must be acquired for projects that benefit the community as a whole, such as the construction of roads or public utilities. When a landowner refuses to sell property needed to allow the project to proceed, the eminent domain process may be initiated. This information describes how state agencies, local government, and some private entities, use the condemnation process in North Dakota. It does not address the eminent domain process used by the federal government or by a private entity which gets condemnation power from federal law.

What is "Eminent Domain?"

Under state law, condemnation proceedings can only be used for projects which have a "public use." The law requires the private property taken be "necessary" for public use. The law does not require a "public use" project be for actual use by the general public. It is usually sufficient that the project only provides a public benefit or supports the general welfare.

How is Property Selected?

The process begins when the condemnor determines that construction of a public project will require the use of private property. To get to that point, however, the condemnor often does surveys and studies to determine exactly which parcels of land are needed. If the property is damaged during the study period, the condemnor must compensate the landowner. When the land needed for the public project has been identified, if the landowner refuses to sell the property may be condemned.

Negotiation Before Condemnation

Before beginning condemnation proceedings, the condemnor must make a "reasonable and diligent effort" to negotiate and buy the property from the landowner. First the condemnor must establish an amount which it believes to be "just compensation" for the property. The condemnor must give the landowner a copy of a written appraisal of the prop-

erty (if one was done) or a written summary showing how the "just compensation" was determined.

The landowner has the right to request a list of at least ten neighboring landowners to whom offers are being made for the same project. If fewer than 10 are affected, then a list of all landowners must be provided. The landlord also has the right to examine and copy any map in the condemnor's possession showing the property affected by the project and to demand from the condemnor a list of any other landowners within the county or adjacent counties whose property must be taken for the project.

When is Condemnation Authorized?

If the landowner and condemnor cannot reach an agreement, the condemnor may use its condemnation powers to acquire the property. At this point the eminent domain procedure differs depending upon what entity is acquiring the property and to what use that property will be put.

The "Quick Take" Procedure

Certain state and local government entities have the power to use the "Quick Take" procedure to acquire property for "right of way." The "Quick Take" procedure allows the government entity to take immediate possession of the property upon offering to buy it and depositing the amount of the purchase offer with the clerk of the district court in the county where the property is located. The clerk must notify the landowner that the money has been deposited. If the landowner disputes the taking of the property or the amount offered for it, the landowner must appeal to the district court.

Condemnation

In all other situations, the condemnor is not allowed to take possession of the property until the amount of "just compensation" has been determined through the court system and that amount has been paid to the landowner or deposited with the court. The court process begins when the condemnor serves the landowner with a summons and complaint.

Use or Necessity?

Landowners may challenge the "use" or "necessity" for taking the land. Under state law, a judge must decide the legal question of use or necessity. The court will schedule a separate hearing to determine these questions. If they are not happy with the judge's decision, the landowner or condemnor may appeal that decision to the North Dakota Supreme Court.

Just Compensation

After the use or necessity issue has been resolved by the court, a trial will be set to determine the amount the landowner should be paid for the property - the "just compensation." The determination will be made by a judge unless the landowner requests a jury trial. At the trial, both the landowner and condemnor present their views on the amount of just compensation. Both sides are allowed to have witnesses, expert appraisers, exhibits and other evidence to support their claims.

"Just Compensation" is determined after the judge or jury has listened to the evidence and considered all the documents presented by both sides. If either side is dissatisfied with the amount determined at trial as just compensation, a new trial may be requested or an appeal made to the North Dakota Supreme Court, or both. While the appeal is pending, the trial court judge may allow the condemnor to take possession of the property after depositing the amount of just compensation awarded at trial. The amount ultimately decided to be due to the landowner will be paid when the appeals are finished.

Damage Awards

The landowner has the right to be compensated for the value of the property taken, including the value of any improvements to the property, as well as payment for certain damages:

- Severance Damages - awarded if the property to be taken is part of a larger parcel of land and the remaining land loses value or is damaged